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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,894	10/31/2003	Jane Dong	67849-0007	4378

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EXAMINER	
SMALLEY, JAMES N	

ART UNIT	PAPER NUMBER
3727	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/699,894	DONG, JANE	
	Examiner	Art Unit	
	James N. Smalley	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9 and 11-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 11-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. US 5,725,122 in view of Richardson et al. US 4,759,478 and in view of Thompson US 5,722,558.

Murphy '122 teaches a lid comprising a container body (2) defining a first opening, a cover (4) having a surface with at least one second opening (48), and a lid/plug (50) with a snapper connection (52) to close the second opening, the second opening is disposed in a cavity (12), and the cover comprises a second cover (42) adapted to fit in the cavity. Examiner notes col. 4, lines 35-40, teaching the cover can be provided with a tear strip.

The reference fails to teach the cavity being at a depth no lower than the lower edge of the rim.

Examiner notes it is well known to vary the depth of storage spaces within closures, as evidenced by the teaching of Thompson '558 which discloses a deep recess (20) or a shallower recess (50) depending on the desired product. Furthermore, Richardson '478 teaches it is known to provide a recess which does not go below a container rim.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Murphy '122, reducing the depth of the closure compartment as taught to be known by Thompson '558 and Richardson '478 and motivated by the desire of providing storage for small articles. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claims 6 and 18 Murphy '122 fails to teach the pouring spout being sized to fit a human hand. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to size the hole to fit a human hand, or to any other desired size, motivated by the

benefit of increasing the flow rate out of the hole. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Regarding claim 25, Examiner notes the claim is rejected under 35 U.S.C. 112, 2nd paragraph for lacking antecedent basis. The claim limitation appears to be drawn from the instant Specification, page 4, paragraph [0013], which states, "[t]he articles may comprise a fastener such as nuts, screws, nails, and bolts, for example." Assuming this is the intended claim limitation, Examiner asserts the limitation is intended use, and does not materially affect the structure of the claimed container. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The device of Murphy '122 is capable of being used in the intended manner, i.e. for holding fasteners.

Regarding claims 11-12 and 22-23, Murphy '122 fails to teach a pivotable connection.

Richardson '478 teaches it is known to provide a cover on a lid with a pivotable hinged connection.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cover of Murphy '122, providing it on the lid with a pivotable hinged connection, as taught to be a known means for closing an opening within the body of a container by Richardson '478.

3. Claims 24-25 and 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. US 5,725,122 in view of Richardson et al. US 4,759,478 and in view of Thompson US 5,722,558 as applied above to claim 26, and further in view of Liu US 4,615,461.

Regarding claims 24-25, Murphy '122 fails to teach what is to be disposed in the container storage space.

Liu '461 teaches a container for screws, nuts, nails, etc, in column 1, lines 5-15.
It would have been obvious to store nuts, nails, or any other suitable article within the storage space of Murphy '122, motivated by the benefit of keeping these loose articles in a single space. Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be

employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 27-28, Murphy '122 fails to teach ruler markings on the second surface.

Liu '461 teaches it is known to provide ruler markings on a container surface to allow measuring of articles. Because both containers are drawn to holding tools, one having ordinary skill in the art would find it obvious to apply the benefit of one container to another.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Murphy '122, providing ruler markings on the side as taught to be known by Liu '461, motivated by the benefit providing a means to measure articles.

Response to Arguments

4. Applicant's arguments filed 10 November 2005 have been fully considered but they are not persuasive.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns

Stephen K. Cronin
Primary Examiner